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No. 86-1853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

OHIO DEPARTMENT OF MENTAL HEALTH,
Petitioner,

—v.—

NANCY MILTON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court below erred in determining that the sincerely held religious belief in faith healing of a legally competent adult with no dependents was entitled to protection under the free exercise clause of the first amendment.

2. Whether, if the patient's free exercise right is recognized, the state's asserted interests in the preservation of her life, in protecting medical judgment, and in caring for those within its custody are sufficiently compelling to outweigh the right of free exercise so as to require the patient to receive medical treatment against her expressed wishes.

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OPINIONS BELOW

The opinion of the Ohio Supreme Court is reported at 29 Ohio St. 3d 20, 505 N.E. 2d 255 (1987) and appears in the petition for certiorari as Appendix A. The unreported opinion of the Ohio Court of Appeals, Tenth Appellate District, was rendered July 18, 1986, and appears in the petition for certiorari as Appendix B. The unreported opinion of the Court of Common Pleas of Franklin County, Probate Division, appears in the petition for certiorari as Appendix C. The unreported finding of the probate referee appears in the petition for certiorari as Appendix D.

STATEMENT OF THE CASE

Respondent Nancy Milton is a fifty-three year old patient receiving care at the Central Ohio Psychiatric Hospital. Nancy Milton has no dependents. In October of 1985, a physical examination of Ms. Milton revealed a tumor in her lower abdominal cavity. In December of 1985, a biopsy was performed with her consent. Petitioner's Appendix B, p. A16. The results of that biopsy indicated that she had a malignant tumor in the cervical area of her uterus. Petitioner's Appendix B, p. A16. The hospital had accepted, without questioning her competency, her informed consent for performance of the biopsy. Petitioner's Appendix A, p. A4.

Nancy Milton refused to consent to the removal of the tumor, primarily because such medical treatment conflicted with her belief in faith healing. Petitioner's Appendix A, p. A3. Dr. Lewis Lindner, the Chief Medical Officer of the hospital, filed an application with the probate court for permission to perform medical treatment on Nancy Milton against her stated wishes. Petitioner's Appendix A, p. A1. The application was filed pursuant to Ohio Revised Code Section 5122.271, alleging that Respondent was unable to give informed, intelligent, and knowing consent to the surgery. Petitioner's Appendix A, p. A3. The petition also requested an order that Respondent submit to radiation treatment, transfusions, and possible surgery, stating that she would suffer an early death without the treatment.[1] Petitioner's Appendix A, p. A3.

A hearing was held before a probate court referee, who recommended that the medical treatment be authorized. Petitioner's Appendix D, p. A25. Objections to the referee's report were filed, which resulted in the probate judge holding a de novo hearing. Petitioner's Appendix C, p. A22.

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1 Respondent's tumor has for several months now been maintained in a state of partial remission. Her current condition is not imminently life-threatening.

The hospital called two witnesses to testify at the hearing, Dr. Lewis Lindner and Dr. Eugene Green, a psychiatrist. Dr. Linder conceded that Respondent has never been adjudicated incompetent, and that that hospital had accepted Nancy Milton's informed consent without question when she approved the earlier treatment and biopsy. Petitioner's Appendix A, p. A4. Dr. Lindner also found that Respondent was of normal intelligence. Petitioner's Appendix A, p. A3. Dr. Lindner claimed that Respondent's expressed reasons for refusing consent constituted a psychotic delusion and that she was unable to understand and appreciate the information necessary to give informed consent. Petitioner's Appendix A, p. A4. Dr. Lindner also asserted that Respondent's entire belief system was delusional because she had a long-standing delusion that she was the spouse of Reverend LeRoy Jenkins, a faith healer and evangelist. Petitioner's Appendix A, p. A4.

Dr. Eugene Green, a non-staff psychiatrist, testified that Respondent was alert, responsive, did not appear confused, and could function in everyday life. Petitioner's Appendix A, p. A3. Respondent had stated to Dr. Green that the primary reason for refusing treatment was her belief in faith healing, but also indicated to him that a secondary reason for refusal was that she had a background in nursing and desired to avoid the adverse side effects which she knew to be attendant to radiation treatments.[2] Petitioner's Appendix A, p. A3. Dr. Green testified that Respondent could receive the information necessary to consent or not consent to medical treatment in an intelligent and informed capacity. Petitioner's Appendix A, p. A7. He found that the Respondent had a long-standing belief in faith healing, and did not believe in other methods of treatment. Petitioner's Appendix A, p. A7. He noted that she was aware of the malignant tumor, but believed that she would be cured through faith healing. Petitioner's Appendix A,

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2 Dr. Green also concluded, "I had the feeling again and again that in her hierarchy of beliefs, number one was [the] omnipotence of faith healing. This was her business. * * * This was God's business and we shouldn't tamper with it. We should believe and be healed." Petitioner's Appendix A, p. A3, n.4.

p. A7. Dr. Green explained that he felt spiritual healing is the prime element in Respondent's life, and that in her beliefs it would be almost a sin to try anything else. Petitioner's Appendix A, p. A7.

The trial court found that Respondent had the mental capacity to understand the nature of her illness and the contemplated treatment, but held that since Respondent was not receiving spiritual treatment from Rev. Jenkins the court could intervene. Petitioner's Appendix C, p. A23. Accordingly, the court ordered the treatment. The court of appeals affirmed, holding that Respondent's "honestly held religious beliefs" in faith healing ". . . by all rational evaluation, constitute a delusion." Petitioner's Appendix B, pp. A19-A20.

The Ohio Supreme Court reversed the appeals court and vacated the surgery order. The court found that patients in state hospitals do not lose the right to consent to or refuse treatment upon entering a hospital. Petitioner's Appendix A, pp. A5-A6. In reviewing the facts, the court determined that Respondent is able to give informed consent, that her belief in faith healing is both religious in nature and sincerely held, and that that belief stands on its own, without regard to any delusion involving her marital status. Petitioner's Appendix A, pp. A6-A7, A11. The court found that the court of appeals had improperly looked to the content of Respondent's religious beliefs and had found her belief in faith healing to constitute a delusion. Petitioner's Appendix A, p. A11. The court held that the state could not compel a legally competent adult to submit to medical treatment which violates the individual's religious beliefs. Petitioner's Appendix A, p. A11.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE OHIO SUPREME COURT HAS STATED AN ADEQUATE AND INDEPENDENT STATE GROUND FOR ITS DECISION, AND THE DECISION IS INHERENTLY DEPENDENT ON STATE LAW AND MATTERS OF FACT.

A. The Decision Below Rests Upon An Adequate And Independent State Constitutional Ground.

It is well established that this Court will not review a state court judgment that is based on an adequate and independent state ground. The Court has held that its "jurisdiction fails," *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935), when a state ground upon which a judgment is based "is independent of [the federal basis] and broad enough to sustain the judgment." *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 164 (1917). The record here suggests that the Ohio Supreme Court based its decision not only upon the First Amendment of the United States Constitution, but also upon an independent basis of Section 7, Article I of the Ohio Constitution.[3]

In determining whether a state ground is adequate to support the judgment, this Court has traditionally deferred to a state court decision striking down a state statute, or holding state action improper, under a state constitutional provision. *See Aikens v. California*, 406 U.S. 813 (1972). The state constitutional provision here is certainly broad enough to support the decision below as evidenced by the syllabus of the case, which clearly places equal decisional weight on the Ohio

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3 Section 7, Article I of the Ohio Constitution states that:

> All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted.

This provision arguably offers significantly broader protections on matters of conscience than does the First Amendment to the U.S. Constitution.

Constitution. *See* Petitioner's Appendix A, p. A1 (paragraph 1 of the syllabus).

Additionally, the state ground is independent of the federal ground. Traditionally, this Court has stated that it "reviews judgments, not statements in opinions." *Black v. Cutter Laboratories*, 351 U.S. 292, 297-98 (1956). Ambiguity has been resolved based on the record in the case. More recently, the Court has moved in the direction of presuming that the federal ground was the basis for decision, and requiring the state court to make a "plain statement" of the state ground and the fact that the decision was, in fact, based upon that ground. *Michigan v. Long*, 463 U.S. 1032 (1983).

Respondent acknowledges that the Ohio Supreme Court analogized federal case law in its review of this case. However, under Ohio law, the syllabus of a decision by the Ohio Supreme Court states the controlling law. *See Ohio v. Johnson*, 467 U.S. 493, 497 n.7 (1984). Here, the court relied on the independent state constitutional ground in paragraph 1 of its syllabus. Moreover, this case may be distinguished from *Johnson*, where this Court found that the state grounds advanced in the syllabus were not independent. In *Johnson* the Ohio court's resolution of the state law provision did not dispose of the case. Rather, the court was required to proceed to the federal questions presented. Additionally, the court failed to refer specifically to the Ohio Constitution in the syllabus. Here, the Ohio Supreme Court expressly based its syllabus and its decision on the Ohio Constitution, stating this ground as co-equal with the federal constitution. *Cf. Florida v. Casal*, 462 U.S. 637 (1983).

Finally, as noted by Justice Stevens, the Court should exercise caution in applying the *Long* presumption in cases, such as this one, where a state court has "upheld a citizen's assertion of a right, finding a citizen to be protected under both federal and state law." *Long, supra*, at 1067-1068. This should be particularly true in a civil matter, such as this one, where the state's interest in overruling the constitutional protection is unclear and of limited weight. See Section II. C, *infra*. Such

review invites, rather than avoids, advisory opinions by this Court, as the state court is unlikely to modify its analysis of state law on remand.

Accordingly, as an adequate and independent state constitutional ground for the judgment has been expressly relied upon by the Ohio Supreme Court, this court should deny review.

B. The Decision Is Critically Dependent Upon Issues Of State Statutory Law.

Even if this Court determines that no independent adequate state constitutional ground for the decision of the Ohio Supreme Court exists here, that decision was premised upon, and ultimately dependent upon, critical interpretations of Ohio statutory law which this Court is without power to review. Accordingly, review would be misplaced and should be denied.

First, the entire procedure utilized by Petitioner to seek to compel treatment against Respondent is based on Ohio law. Ohio Revised Code Section 5122.271 allows a probate court to order certain limited medical interventions where "a patient is physically or mentally unable to receive the information required" to give an informed consent. This provision is unique to Ohio law, and it was this type of proceeding that generated the decision of the Ohio Supreme Court. In effect, therefore, the Ohio Supreme Court has placed a constitutional limit on Ohio law. Thus this Court should not intervene in what is essentially a matter of an interpretation of state law by the state's highest court.

Perhaps even more significant, however, is the factual/legal premise of Respondent's legal competency, a question purely of state law and upon which the Ohio Supreme Court's decision is squarely based. Petitioner's Appendix A, p. A5. Under Ohio law, issues of competency and the need for guardianship are dealt with at Chapter 2111. of the Ohio Revised Code. *See* 2111.01(D). Moreover, in 1975 Ohio amended its laws to specify that all patients who are involuntarily hospitalized retain all legal and civil rights, and are fully

competent absent a separate finding under Ohio Revised Code Chapter 2111. Ohio Revised Code Section 5122.301 states that:

> No person shall be deprived of any public or private employment solely because of having been admitted to a hospital or otherwise receiving services, voluntarily or involuntarily, for a mental illness or other mental disability.
>
> Any person admitted to a hospital or otherwise taken into custody, voluntarily or involuntarily, under Chapter 5122. of the Revised Code retains all civil rights not specifically denied in the Revised Code or removed by an adjudication of incompetence following a judicial proceeding other than a proceeding under sections 5122.11 to 5122.15 of the Revised Code.
>
> As used in this section, "civil rights" includes, without limitation, the rights to contract, hold a professional, occupational, or motor vehicle operator's or chauffeur's license, marry or obtain a divorce, annulment, or dissolution of marriage, make a will, and sue and be sued.

That the Ohio Supreme Court's decision was substantially based on these premises cannot be seriously disputed. The Court states:

> At the outset, we emphasize that at no time has any court found appellant [Ms. Milton] to be incompetent. . . . [E]ven if she were to be involuntarily committed, that commitment would not be tantamount to a finding of incompetency. Commitments to a mental institution and adjudications of incompetency are distinct legal proceedings which determine separate issues and often lead to different results.

Petitioner's Appendix A, p. A5.

It is apparent here that this decision involved a balancing by Ohio's highest court of difficult questions of policy premised in large part on interpretations of Ohio statutes. The decision, though involving constitutional matters, is totally dependent

upon these interpretations of state statutes, and, of course, is subject to change with any subsequent reinterpretation of these statutes. Accordingly, even assuming the existence of an important federal question here, this case should not be the vehicle for its determination.

C. The Decision Is Inherently Fact Based.

As noted above, the Ohio Supreme Court's decision in this case is heavily dependent on Ohio law, thus arguing against review. Additionally, however, the decision is one inherently fact-based, further cautioning against review by this Court. Attempts by the Court to resolve the federal question on these facts, which are subject to varied interpretation, would in fact lead to no resolution at all.

Specifically, the Ohio Supreme Court placed its emphasis on the testimony of Dr. Green, a psychiatrist. Dr. Green testified, and the Court so found, that while Respondent did have a delusion of being married to a local faith healer, "appellant's belief in spiritual healing stands on its own, without regard to her delusion." Petitioner's Appendix A, p. A11.

This subtle, albeit accurate, factual distinction is critical to the Ohio Supreme Court's analysis, yet is beyond review by this Court. Accordingly, exercise of discretionary review by this Court would be misguided.

II. THE DECISION OF THE OHIO SUPREME COURT IS IN ACCORD WITH THE SETTLED JURISPRUDENCE OF THIS COURT.

A. The Ohio Supreme Court Properly Protected Respondent's Sincerely Held Religious Belief In Faith Healing.

Petitioner defines at p. 8 of its petition "the threshold free exercise inquiry—what mental state is required for an allegedly religious belief to receive first amendment protection?" Petitioner then correctly concedes that this question was answered in *U.S. v. Ballard*, 322 U.S. 78 (1944), which established as the proper criterion "the sincerity of the defendants in asserting their claims—did the defendants actually believe their faith

healing representations?" Petition, p. 8. That criterion has been consistently reaffirmed by this Court: "[W]hile the 'truth' of a belief is not open to question, there remains the significant question whether it is 'truly held.' This is the *threshold question of sincerity* which must be resolved in every case." *U.S. v. Seeger*, 380 U.S. 163, 185 (1965) (emphasis added).

As a matter of law, sincerity of religious belief is the criterion for first amendment protection. Petitioner did not deny the sincerity of Respondent's belief in faith healing before the Ohio Supreme Court, either in its brief or at oral argument. The Court reached as a matter of fact a "conclusion that appellant's belief in spiritual healing stands on its own, without regard to any delusion." Petitioner's Appendix A, p. A11. It found her belief to be sincere: "Appellant has expressed a long-standing belief in spiritual healing, and great weight must be given to her statement of her personal beliefs." Petitioner's Appendix A, p. A11. In support of that proposition, the Court quoted *Seeger, supra*, at 184: " 'In such an intensely personal area, . . . the claim of the . . . [believer] that his belief is an essential part of a religious faith must be given great weight.' " Petitioner's Appendix A, p. A11. Given such a factual situation, it was entirely appropriate for the Ohio Supreme Court to find Respondent's belief in faith healing to be entitled to first amendment protection.

B. The Decisions In *Ballard* And *Seeger* Need Not Be Reevaluated In Light Of This Case.

Ballard and *Seeger*, viewed together, clearly establish a two-pronged test to determine whether a person's professed belief qualifies for free exercise protection:

(1) Is the belief religious in nature?

(2) If so, is it sincerely held by the person seeking protection?

In the more than forty years since the *Ballard* decision was handed down, this test has proved sound and serviceable in a great variety of factual scenarios. For instance, in *Sherbert v.*

Verner, 374 U.S. 398 (1963), this Court found a person's refusal to work on Saturdays to be related to a sincerely held religious belief and thus to justify eligibility for unemployment benefits. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), sincerity of religious belief was again the deciding factor in exempting Amish children from compulsory school attendance.

In scrutinizing religiosity and sincerity, however, courts have not failed to deny such claims where factually appropriate. In *Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), the court found that a claimed religious creed mandating the consumption of a certain cat food was "a mere personal preference and, therefore, is beyond the parameters of the concept of religion as protected by the constitution. . . ." 441 F. Supp. at 1385. Likewise, in *U.S. v. Kuch*, 288 F. Supp. 439 (D.D.C. 1968), the court ruled that a claimed "religious" belief requiring the possession and sale of illegal drugs was not, in fact, religious in nature.

Courts have thus proven themselves fully capable of assessing religiosity and sincerity and adjudicating accordingly. They are not floundering about with this issue, as Petitioner suggests, nor are they groping for a solution to any quandary posed by *Ballard* and *Seeger*.

Likewise, no clamor for increased scrutiny of professed religious beliefs has been raised by legal scholars. Indeed, such controversy as exists centers largely around calls for less stringent judicial examination of religious precepts, including calls for abolishing inquiries into "sincerity." *See e.g.* Heins, "Other People's Faiths": The Scientology Litigation and the Justiciability of Religious Fraud, 9 Hastings Const. L. Q. 153 (1981).

In its findings both on issues of fact and on issues of law, the decision of the Ohio Supreme Court fell well within the accepted guidelines established by this Court in *Ballard*, and *Seeger*. Those cases have once again proved sound; they need not be reexamined here.

C. Petitioner Has Advanced No State Interest Sufficient To Justify Interference With Respondent's Right To Free Exercise Of Her Religious Beliefs.

Petitioner asserts, "The weight of the state interests can be no greater than that present here. . . ." Petition, p. 16. This statement is patently false. The state's interests would be far more cognizable if this case involved, for example, the welfare of an unborn child, dependent child, or a person who had previously been declared legally incompetent. In fact, this case involves only the state's desire to seek to extend for some uncertain period the life of a fifty-three year old legally competent woman who for religious reasons shuns such state interference. At oral argument before the Ohio Supreme Court, Petitioner conceded that the sole state interest being advanced was the desire to extend Respondent's life for Respondent's own sake. This rationale was rejected by the Ohio Supreme Court as insufficient to override Respondent's free exercise interests. That decision is supported by the great weight of authority in similar cases. *See e.g.*, *Winters v. Miller*, 446 F. 2d 65 (2d Cir. 1971), *cert. denied*, 404 U.S. 985 (1971); *In re Estate of Brooks*, 32 Ill. 2d 361, 205 N.E. 2d 435 (1965).

Petitioner now seeks to advance new state interests not presented below, such as protecting the professional integrity of state-employed physicians. Petition, p. 14. Such an interest has commonly been rejected as inadequate when weighed against protected personal interests in avoiding treatment. *See e.g.*, *Brophy v. New England Sinai Hospital, Inc.*, 398 Mass. 417 (1986); *Bouvia v. Superior Court*, 179 Cal. App. 3d 1127 (1986).

Finally, Petitioner suggests that Respondent's right of free exercise may be abridged because of the state's interest in providing medical care for those in its custody. As Petitioner pointed out in its brief to the Ohio Supreme Court, the source of this claim is Ohio Revised Code Section 5122.27(E), which establishes that each patient shall "[b]e provided with adequate medical treatment for physical disease or injury." Several forces combine to undermine Petitioner's claim. First, the right

to receive any particular medical teratment is a right personal to the patient and may be properly waived by the patient. Second, the interpretation of this section of Ohio law is properly left to the Ohio courts. Third, the Ohio Supreme Court specifically found that "Appellee does not suggest any state interest sufficient to justify interfering with appellant's religiously inspired refusal to consent to medical treatment." Petitioner's Appendix A, p. A8. That finding was well grounded and should not be disturbed by this Court.

The state of the law in this area was aptly summarized by the Second Circuit under circumstances closely resembling those of this case:

> The appellees suggest a number of similar situations where the courts have held that the state's interest outweighs any First Amendment rights. These cases are, however, inapposite for each involved a clear interest, either on the part of society as a whole or at least in relation to a third party, which would be substantially affected by permitting the individual to assert what he claimed to be his "free exercise" rights. In the present case, the state purports to find an "overriding secular interest of public health and welfare" in the "care and treatment of persons suffering from a mental disorder or defect and [in] the protection of the mental health of the state." Yet there is no evidence in the record that would indicate that in forcing the unwanted medication on Miss Winters the state was in any way protecting the interest of society or even any third party.

Winters v. Miller, *supra*, at 70 (citations omitted).

CONCLUSION

The petition presents no issue warranting review by this Court. Respondent therefore respectfully prays that this Court deny the petition for certiorari.

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APPENDICES

APPENDIX A

Excerpt from Hearing Before the Probate Court

(February 12, 1986)

No. M-5303

IN THE

PROBATE COURT OF FRANKLIN COUNTY, OHIO

In the Matter of

NANCY MILTON

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

MR. MICHAEL EVANS,
On behalf of Central Ohio Psychiatric Hospital.

MR. RONALD L. SMITH,
On behalf of the Ohio Legal Rights Service.

BE IT REMEMBERED that on the trial of the above entitled cause at the January term, 1986, of the Probate Court of Franklin County, Ohio, before Honorable Richard B. Metcalf, Judge, the Executor, to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf the following evidence, to-wit:

* * * * *

[21] EUGENE GREEN called as a witness on behalf of the Central Ohio Psychiatric Hospital, being first duly sworn, testified as follows:

Direct Examination By Mr. Evans:

Q. State your name and occupation, Doctor. A. Eugene Green, M.D., Psychiatrist.

Q. Doctor, you are also licensed. Are you a licensed physician in the State of Ohio? **[22]** A. Yes.

Q. To practice medicine as well as psychiatry in the past? A. Yes.

Q. You are not a full time employee of the State of Ohio, are you? A. I am not.

MR. EVANS: May we stipulate the doctor's qualifications?

MR. SMITH: Yes, we'll so stipulate.

Q. Doctor, have you had an opportunity to examine Nancy Milton and review her records? A. Yes. I saw Nancy about a month ago and again this morning for the better part of an hour.

Q. And are you aware of the recommendation of the Chief Medical Officer at COPH that she receive certain treatment for a cancer condition that she has? A. Yes.

Q. To-wit, the transfusion, radiation treatment and possible surgery that Dr. Lindner has indicated in his testimony? A. Yes.

Q. And did you examine her with that knowledge? A. Yes.

Q. Would you tell us, first, whether or not you concur **[23]** with the opinion of the Chief Medical Officer of COPH concerning the need for this treatment? A. I do.

Q. Could you tell us why, why you concur? A. Well, very simply, she has a malignancy. She has what is called adenocarcinoma of the uterus, of the cervix, the lower part of the uterus where the biopsy was taken from, probably has invaded the uterus because she says she can feel the big lump down in her pelvis.

Q. I didn't hear— A. She can feel the big lump herself down in the pelvis. Any maligancy should be treated. And the best possible way to eliminate it, in her case, as in every case, you have to know the whole picture and the only way possible usually is through exploration to see where the cancer has metastasized. If it's gone up to her liver or pancreas, the outlook is pretty hopeless. If it hasn't, then you got a much better outlook because all cancers are susceptible to some type of treatment; some of them extremely so. They would have to take a biopsy higher up from inside the abdominal cavity and find out how treatable it is with chemotherapy. Some cancers melt away with radiation and cobalt. There's no way to tell in advance what you can or what you need to do.

Q. Can I stop you there for a minute? In order to **[24]** determine the value of any surgery that might be performed or the extent of any surgery that might be performed, you would have to go through additional treatment and diagnosis procedures to get to that point? A. Yes, very definitely.

Q. I didn't say that very well but you understand what I mean. Doctor, did you discuss with Ms. or Mrs. Milton her refusal to accept the course of treatment? A. Yes. She made it very clear every time I got near the subject that she was a faith healer, didn't believe in other methods of treatment, that God would take care of it. She herself has been a faith healer and has brought back sight to blind people. She said her husband, meaning Leroy, drilled a hole behind the church up in Delaware and this is like a miniature well and out of it comes water and this is holy water and that along with her capacity for gift of curing, she's gifted and cured many people but Leroy is the big specialist in curing sick people.

Q. In the course of your examination did you examine her to determine her mental condition at this time? A. Yes.

Q. Did you arrive at a diagnosis? A. Yes, She has very vivid delusions that she is blessed with certain talents from God and that she is indeed Mrs. Leroy Jenkins. The two of them together are faith **[25]** healers.

Q. That's in your opinion a delusion of hers? A. Very fixed and every time I would get near more questions concerning the system, she would back off and say "Well, I can answer

some of your questions but I cannot answer questions dealing with the fact that I am Mrs. Jenkins or that I have special powers. I can't talk about those." She said "After I get out of here and am well, you come up to see me and I'll tell you all about it."

I asked her about Leroy being in jail and she said "Well, that happens to many people who are blessed by God, that they end up being scoured by nonbelievers." I asked her about how long she had been married to Leroy. She said "I can't answer that," and I got that stock answer on many many questions dealing with the delusion system.

Q. Based on your assessment of her—by the way, I ought to ask one thing. I don't know if the record reflects this. You are a practicing psychiatrist also, is that correct? A. Am I what?

Q. You're a practicing psychiatrist? A. Yes.

MR. EVANS: I don't know if we have the stipulation on the record but would you stipulate that Dr. Green is qualified as a psychiatrist?

[26] MR. SMITH: Yes, we'll stipulate.

Q. Doctor, in your opinion, based on your examination of her, your knowledge of her medical condition and the treatment procedures that are being advocated, the side effects of those procedures and so on and so forth, in your opinion, is this lady capable of receiving the information necessary to consent or not consent in an intelligent and informed sensible capacity? A. Yes, she's capable.

Q. Would you explain what you mean by that? A. Part of the findings reflect a psychosis. It's pretty much limited to delusional imaginations. Certain other parts of her seem pretty much intact. She is a very pleasant woman, remembered who I was when I came in. She can function in many areas such as every-day management, every-day care but part of her mind function is blocked out by this delusional system.

For instance, Mr. Jenkins said that he was being tremendously annoyed by all her telephone calls and begged the hospital to discontinue her telephone privileges yet she insists that she is Mrs. Leroy Jenkins. So this part is psychotic.

On the other hand, in the past, she's had a lot of hysterical findings.

Q. She's had a lot of what? **[27]** A. Hysterical findings. She had blindness of her left eye and then later she had blindness of both eyes and she went to Leroy for spiritual healing and he restored her sight, so that convinced her, but we also know that hysterical blindness is readily cured by a variety of things like hypnosis and if you've seen Leroy operate on TV, he has a system of his own which includes yelling at the person and slapping them on the face. And there's varied techniques of restoring hysterical defects and this is what's convincing her that he has the gift.

Q. As a result of those experiences and her beliefs, is she now in a position where she feels that this cancer or whatever is wrong with her is going to be cured by Leroy Jenkins? A. Yes, by faith healing by Leroy Jenkins.

Q. From what you are able to ascertain is she refusing the surgery in any meaningful part because of side effects? A. Yes.

Q. Because of problems that occur in the treatment? A. Yes. The first answer was "And lose all my hair" is one of common side effects with both chemotherapy and radiation. I said "So what? It's going to save your life." She said "Never."

Q. And what? **[28]** A. She said "I'm a nurse. I've seen people taking cancer treatments and lose their hair and vomit. They feel terrible. Not worth it," and then I asked her about being a nurse because I had my doubts and she wouldn't talk about that. I asked her was she a graduate nurse, practical nurse or what? And she wouldn't answer.

Q. If I were to ask a simple question: Why do you think she's refusing the surgery, how would you answer? A. I think that it conflicts with her basic beliefs that faith healing is the prime thing in life and it would be almost a sin to try anything else.

Q. But that part of her makeup is the crux of her mental illness, is it not? The whole system of beliefs about Leroy Jenkins and the business about faith healing and so on and so forth, isn't that the core of her delusional system? A. This is her psychosis, yes.

MR. EVANS: No further questions.
JUDGE METCALF: Cross examination?

Cross examination By Mr. Smith:

Q. Dr. Green, you said that when you spoke with her you discussed her carcinoma with her, is that correct? A. Yes.

Q. Did she seem to be aware of what you were talking **[29]** about, of not only of the concept of carcinoma but of the existence of something in her which has been labeled carcinoma? A. Yes.

Q. You said she pointed to her pelvic area and described a lump there. A. Yes.

Q. Was it your opinion that that's the carcinoma she was referring to in your discussion? A. Yes.

Q. So she was aware in specific terms of not only cancer in general but her own possible cancer? A. Yes, it's also bleeding too.

Q. I'm sorry, what was that? A. It's also bleeding.

Q. Did you yourself discuss with her basic elements about what cancer is about and what the side effects of the treatment would be and what the possible effect would be if she did not undergo any treatment at all? A. We didn't talk about death because she's blocked this off, so she said "I'm going to get well through faith healing."

Q. She is aware of the need to get well by one means or another? A. Yes.

[30] Q. When she described her nurse experiences to you, she said that she herself specifically had dealt with persons. A. She had taken care of people who were being treated for cancer and the first thing happens is their hair fell out.

Q. Is that accurate? A. Yes.

Q. Did she describe other symptoms that appeared in these persons? A. No; said they felt terrible, that's true, and she also had some blood dyscrasia.

Q. Could you describe what that is? A. This is one of the sickle-cell group of anemia she has. I think she's also lost a lot of blood too. Her hemoglobin is around nine which is pretty low.

Q. Was it your impression that when you discussed these matters that she was receiving this information and answering you in terms that relate to the question or was she not receiving the information so that she could not respond to your question? A. She's bright and alert and understood everything, I think. She didn't seem at all confused. She had good eye contact. She would respond in a very related way.

MR. SMITH: I have no further questions, Your Honor.
MR. EVANS: I have one redirect question, Doctor.

[31] *Redirect examination By Mr. Evans:*

Q. I have been generally confused about this aspect of your testimony. From your assessment of Nancy Milton, did you feel that she is refusing this treatment because she fears the side effects and would rather die or because why go through all that and lose my hair and et cetera when I could be cured by a much easier method, that is, faith healing? A. She had these feelings more or less in parallel respective: Number 1, of course, would be almost an insult to her basic beliefs that she should be cured or anything should be cured by faith healing; and she also had concern that she didn't want treatment because it would be detrimental to her: Hair falling out, feeling bad.

Q. But then I thought you said in response to a cross examination question that she blocks out the consequences of not receiving the treatment, that is, death? A. Well, we didn't talk about death and she didn't mention it and she seemed so airtight in her own system I didn't bring it up and try to frighten her or anything, but I had the feeling again and again that in her heirarchy of beliefs, number one was omnipotence of faith healing. This was her business. This was Leroy's business. This was God's business and we shouldn't tamper with it. We should believe and be healed. Therefore, why try any other system, any **[32]** other thing?

MR. EVANS: Okay, no further questions.
MR. SMITH: Nothing further.
JUDGE METCALF: No further witnesses by either side?
MR. EVANS: None.
MR. SMITH: None, Your Honor.

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APPENDIX B

Ohio Revised Code Sec. 2111.01

2111.01 Definitions.

As used in Chapters 2101. to 2131. of the Revised Code:

(A) "Guardian," other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor, or the department of mental retardation and development disabilities or an agency under contract with the department for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent.

(B) "Ward" means any person for whom a guardian as defined in this section is acting.

(C) "Resident guardian" means a guardian appointed by a probate court to have the care and management of property in Ohio belonging to a nonresident ward.

(D) "Incompetent" means any person who by reason of advanced age, improvidence, or mental or physical disability or infirmity, chronic alcoholism, mental retardation, or mental illness, is incapable of taking proper care of himself or his property or fails to provide for his family or other persons for whom he is charged by law to provide, or any person confined in a penal institution within this state.

APPENDIX C

Ohio Revised Code Sec. 5122.27

5122.27 Classification of patients; treatment plan standards; procedure when required treatment unavailable.

The head of the hospital or his designee shall assure that all patients hospitalized pursuant to Chapter 5122. of the Revised Code shall:

(A) Receive, within twenty days of their admission sufficient professional care to assure that an evaluation of current status, differential diagnosis, probable prognosis, and description of the current treatment plan is stated on the official chart;

(B) Have a written treatment plan consistent with the evaluation, diagnosis, prognosis, and goals which shall be provided, upon request of the patient or patient's counsel, to the patient's counsel and to any private physician or licensed clinical psychologist designated by the patient or his counsel or to the legal rights service;

(C) Receive treatment consistent with the treatment plan. The department of mental health shall set standards for treatment provided to such patients, consistent wherever possible with standards set by the joint commission on accreditation of hospitals;

(D) Receive periodic reevaluations of the treatment plan by the professional staff of the hospital at intervals not to exceed ninety days;

(E) Be provided with adequate medical treatment for physical disease or injury;

(F) Receive humane care and treatment, including without limitation, the following:

(1) The least restrictive environment consistent with the treatment plan;

(2) The necessary facilities and personnel required by the treatment plan;

(3) A humane psychological and physical environment within the hospital facilities;

(4) The right to obtain current information concerning his treatment program and expectations in terms that he can reasonably understand;

(5) Participation in programs designed to afford him substantial opportunity to acquire skills to facilitate his return to the community;

(6) The right to be free from unnecessary or excessive medication;

(7) Freedom from restraints or isolation unless it is stated in a written order by the head of the hospital or his designee, or the patient's individual physician or psychologist in a private or general hospital.

(G) Be notified of their rights under the law within twenty-four hours of admission, according to rules established by the legal rights service.

If the head of the hospital is unable to provide the treatment required by divisions (C), (E), and (F) of this section for any patient hospitalized pursuant to Chapter 5122. of the Revised Code, he shall immediately notify the patient, the court, the legal rights service, the chief of the division of mental health facilities and services, and the patient's counsel and legal guardian, if known. If within ten days after receipt of such notification by the chief of the division of mental health facilities and services, he is unable to effect a transfer of the patient, pursuant to section 5122.20 of the Revised Code, to a hospital, mental health clinical facility, or other medical facility where treatment is available, or has not received an order of the court to the contrary, the involuntary commitment of any patient hospitalized pursuant to Chapter 5122. of the Revised Code and defined as a mentally ill person subject to hospitalization by court order under division (B)(4) of section 5122.01 of the Revised Code shall automatically be terminated.

APPENDIX D

Ohio Revised Code Sec. 5122.301

5122.301 Civil rights retained.

No person shall be deprived of any public or private employment solely because of having been admitted to a hospital or otherwise receiving services, voluntarily or involuntarily, for a mental illness or other mental disability.

Any person admitted to a hospital or otherwise taken into custody, voluntarily or involuntarily, under Chapter 5122. of the Revised Code retains all civil rights not specifically denied in the Revised Code or removed by an adjudication of incompetence following a judicial proceeding other than a proceeding under sections 5122.11 to 5122.15 of the Revised Code.

As used in this section, "civil rights" includes, without limitation, the rights to contract, hold a professional, occupational, or motor vehicle operator's or chauffeur's license, marry or obtain a divorce, annulment, or dissolution of marriage, make a will, and sue and be sued.

APPENDIX E

Ohio Constitution, Section 7, Article I

Section 7, Article I Rights of conscience; the necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.